

STATEMENT OF THE CASE

Defendant-Appellant Calvin L. Wilson (“Wilson”) brings this direct appeal from his convictions after a bench trial of the Class A misdemeanor of resisting law enforcement, the Class B misdemeanor of false reporting, and the Class C felony of possession of cocaine.

ISSUE

Wilson states the issue as: whether the trial court erred in denying Appellant’s Motion to Suppress certain evidence and then by admitting said evidence at trial.

FACTS

Officer Hoffman was transporting a suspect to the lockup when he spotted a black Corolla with two men inside. Hoffman saw that one of the men was Kendrick Bates. Hoffman knew that Bates had an active warrant against him for dealing cocaine. Hoffman radioed dispatch so that other units in the area knew what he had seen. The Corolla pulled out and was behind Hoffman’s vehicle. Hoffman continued radioing their location. The Corolla turned onto another street. Hoffman observed another police vehicle a short distance behind the Corolla.

Officer Deshaies heard the radio transmissions and headed for the area where the Corolla was. While on the way, Deshaies had confirmed by radio the existence of the warrant and obtained a physical description of Bates. Deshaies was behind the Corolla when the driver made a turn without using a turn signal. Desahaies was going to make a traffic stop of the Corolla. However, the car angled into the curb before the police car’s emergency lights could be activated. Wilson got out of the passenger side of the Corolla

and started walking away. Deshaies also stopped and exited his vehicle. Wilson's description also matched the description of Bates. Deshaies was in full uniform, and after identifying himself as a police officer, told Wilson to stop because he wanted to talk to him. Wilson looked at Deshaies and began walking away at a faster pace. Deshaies repeated his request and Wilson began to run. Deshaies and another officer gave chase. Deshaies again identified himself as a police officer and told Wilson to stop. Wilson ran faster yet.

Deshaies observed Wilson throwing something away. After Wilson was apprehended, the police returned to find a clear plastic baggie containing a substance later identified as cocaine. Although the day was rainy, the baggie was dry.

Wilson was returned to Deshaies' police car where he gave the police a false identification card. Wilson confirmed that he was the person identified on the false identification card. Deshaies determined that Wilson was not the person identified on the identification card presented. Deshaies also established Bates' identifying information and that it matched Wilson's description even down to a tattoo on the chest of each. When told that he was being arrested, Wilson owned up to his true identity. Wilson had two outstanding arrest warrants against him. As they were booking Wilson into jail, the police discovered a small, black electronic scale that had cocaine residue on it. The scale was found in a zippered pocket in Wilson's jacket.

Additional facts will be added as needed.

DISCUSSION AND DECISION

Before discussing the merits of the issue it is necessary to establish the proper standard of review.

Wilson filed a motion to suppress. After a hearing, the trial court denied the motion. Wilson did not take an interlocutory appeal from that decision, but instead objected at trial as the cocaine and the electronic scale were introduced. Wilson frames the issue in terms of error in the denial of the motion to suppress.

The trial court's denial of a motion to suppress is insufficient, under the present facts, to preserve error for appeal. *Washington v. State*, 784 N.E.2d 584, 586 (Ind. Ct. App. 2003). Accordingly, the proper standard of review is for an abuse of discretion. The admissibility of evidence is within the sound discretion of the trial court. *Curley v. State*, 777 N.E.2d 58, 60 (Ind. Ct. App. 2002). We will only reverse a trial court's decision on the admissibility of evidence upon a showing of an abuse of that discretion. *Id.* An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.* The Court of Appeals may affirm the trial court's ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court. *Moore v. State*, 839 N.E.2d 178, 182 (Ind. Ct. App. 2005). We do not reweigh the evidence, and consider the evidence most favorable to the trial court's ruling. *Hirsey v. State*, 852 N.E.2d 1008, 1012 (Ind. Ct. App. 2006).

Even though Wilson's motion to suppress is not the subject of the issue, discussion of it is necessary to determine what Wilson's argument is here on appeal. The motion to

suppress contained a generic allegation of violation of the State and Federal Constitutions. The motion alleged that there “was no reasonable suspicion that [Wilson] was committing a crime or about to commit a crime”. Wilson made objections to the admission of the cocaine and the scales at trial by referring back to the motion to suppress. Other arguments or claims that were not made at trial are not available for review. *Kincaid v. State*, 837 N.E.2d 1008, 1010 (Ind. 2005).

In his ruling denying the motion to suppress, the trial judge stated that the issue was whether a police officer has the right to order a passenger in an automobile to remain at the scene of a traffic stop. The trial judge noted the discrepancy between the cases of *Walls v. State*, 714 N.E.2d 1266, 1268 (Ind. Ct. App. 1999) where it was held that a police officer did not have the authority to order a passenger back to the vehicle after he exited and walked away, absent a showing that the defendant was engaged or about to be engaged in criminal activity, and the case of *Tawdul v. State*, 720 N.E.2d 1211, 1216-17 (Ind. Ct. App. 1999) where the court on review held that the police may detain a passenger who exited the vehicle after it had been lawfully stopped to ascertain the situation and alleviate the officer’s concerns for his safety.¹ The trial court followed the holding in *Tawdul*.

We first note that Wilson’s contention that no traffic stop occurred is not well-founded. The trial judge, in framing the issue in his ruling on the motion to suppress, determined from the evidence produced at the hearing that indeed a traffic stop did occur.

¹Rehearing and transfer were denied in both *Walls* and *Tawdul*.

We assume Wilson's argument is based on the fact that the Corolla pulled over prior to the activation of the police vehicle emergency lights.

Nonetheless the question remains as to whether the evidence shows that Wilson was engaged in committing a crime or was about to commit a crime.

Officer Deshaies knew that one of the persons in the Corolla had an outstanding warrant against him, and that the driver of the Corolla made a turn without signaling, thereby setting the stage for a traffic stop. The driver of the Corolla stopped with Wilson alighting prior to the vehicle coming to a complete halt. Wilson commenced walking backwards, and then turned and quickly walked and then ran, even though the police officer was in full uniform, had been driving a marked police vehicle, and had issued several commands to stop.

Evidence of flight following a police officer's order to stop is admissible in a prosecution for resisting law enforcement regardless of the lawfulness of the order. *Lashley v. State*, 745 N.E.2d 254, 261 (Ind. Ct. App. 2001). See Ind. Code §35-44-3-3(a)(3).

Additionally, *Walls*, permits the detaining of a passenger who is about to be, or is, engaged in a criminal activity. *Tawdul*, allows a passenger to be detained so that a police officer can ascertain the situation and or alleviate concerns for the officer's safety.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Police officers, however, may briefly detain a person for investigatory purposes if they have a reasonable suspicion that criminal activity may be afoot. Reasonable suspicion exists where the facts known to the officer at the moment of the stop, together with the reasonable inferences arising therefrom, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to

occur. In deciding whether there was reasonable suspicion for a stop, we look to the totality of the circumstances of a given case. The reasonable suspicion inquiry is fact sensitive and is thus determined on a case-by-case basis. We review a trial court's determination regarding a reasonable suspicion *de novo*.

Burkes v. State, 842 N.E.2d 426, 429-30 (Ind. Ct. App. 2006). (Citations omitted.)

Officer Deshaies knew that one of the occupants of the Corolla had an outstanding warrant pending against him and that his fugitive status was such that an arrest could be made. (As it turned out both occupants had outstanding warrants pending against them.) *See* Ind. Code §35-44-3-6(a), Failure to Appear. Under the facts of this case, the officer, at the time of the traffic stop, had a reasonable suspicion, along with the inferences flowing therefrom, that criminal activity was, or would be, occurring.

CONCLUSION

The trial judge did not abuse his discretion in admitting the cocaine and electronic scales into evidence at trial. Judgment affirmed.

BAILEY, J., and MAY, J., concur.